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U.S. Patent Application Serial No. 10/618,166
MJM Docket No. 2295-4DECLARATION OF JERRY E. BROWER

1. I, Jerry E. Brower declare that I am the President of Wall Repair Systems Inc. ("WRS") and that I am the assignee/owner of U.S. Patent 6,607,621 and its continuations and divisionals, including the present U.S. Patent Application Serial No. 10/618,166. I am personally familiar with the invention shown, described, and claimed in the '166 Patent application.
2. I have been personally involved with the drywall repair and painting industry for over 25 years. I have been a paint contractor as well as a general contractor since 1992. I am personally familiar with the drywall installation and repair industry, and have followed the problems, developments, and improvements in that market with great interest throughout my career.
3. Before Applicant's invention, a long-felt and unsolved problem for the homeowner, landlord, renter, contractor, and maintenance person, was that whenever there was damage to their building's drywall or plaster, there was no quick, easy, or clean way to repair the damage. This was true whether the damage was in the form of a hole, a crack, or outside corner damage.
4. Traditionally, a person would have to repair a hole in the drywall by cutting a piece of wood, putting it through the hole, and attaching it to the wall frame, such as by screwing

it from the front. This would provide backing for the new drywall. The person would then need to cut a piece of drywall the same size as the hole and attach it to the backing. Next they would take a piece of either fiberglass joint tape or paper fibered joint tape and install it to the wall to bridge the gap between the new drywall and the old. Once that had been done, the person would then need to put joint compound over the tape, let it dry overnight, then put on another coat of joint compound, let it dry, sand it, and then put on a joint topping. They would still need to let that dry, sand it smooth, and then paint it. If the wall was textured, the person would also need to texture the repaired surface to match the texture of the surrounding wall before painting.

5. Although the prior art provided a partial solution to this problem, the various prior art approaches never gained widespread acceptance due to their numerous drawbacks. For example, each of the prior art solutions suffered from one or more of the following significant disadvantages:
 - A. Prior art methods of repairing holes or cracks in walls required the need for topping the patch with some sort of compound.
 - B. Prior art methods for repairing holes or cracks in walls required sanding the surface after applying the topping compound.
 - C. Prior art methods for repairing holes or cracks in walls required additional steps to match the repaired area with the surrounding wall surface after the repair had been made.
 - D. Prior art methods for repairing holes or cracks in textured walls required texturing the patch after application to match textured wall surfaces.

- E. Prior art methods for repairing holes or cracks in walls used various types of wall patches having straight, even, or uniformly serrated edges, which generally provide a visible repair area that does not blend ideally with surrounding wall surfaces.
- 6. Because of these and other deficiencies, the prior art solutions are inherently inefficient, and have therefore failed to provide a satisfactory solution to the problems of the industry. Examples of various failed attempts of others at solving the industry problems are shown in Exhibit A.
- 7. In 1999 WRS (operating under the name "Step Saver Products") began selling the Fast Patch, which was the first commercial embodiment of the invention disclosed in the '166 application. The packaging for this embodiment is shown in Exhibit B along with promotional material stating the advantages of the Fast Patch.
- 8. Since almost immediately after the introduction of the Fast Patch, the invention has enjoyed tremendous popularity among consumers. WRS now offers 18 different products embodying the principles of the invention disclosed in the '166 application. Some of these additional products are shown in Exhibit C.
- 9. The Fast Patch was the first wall patch of its kind on the market and represented a major and significant innovation and improvement over the other available wall patches for numerous reasons.

10. In particular, none of the prior art patches teach an edge having an uneven serration, nor am I aware of any products in the market place prior to ours that have had non-uniformly serrated edges. This edging is a significant advantage over the prior art, and over all other products on the market prior to the Fast Patch. It permits the wall patch to blend in much more effectively with the surrounding wall surface.
11. Although various prior art references teach the specific intent of patching a hole so that a compound can be applied directly over the patch, this only eliminates the need to use backing as well as a piece of drywall, prior to putting on the compound. The end user would still be required to sand the compound, and texture over the patch to match the surrounding surface (if needed).
12. Unlike prior art wall patches, our wall patches permit paint to be applied directly over them. Accordingly the end user can paint over the wall patch without the need to first cover it with any type of compound. In addition to eliminating the need to apply a compound, this also ensures that the end user does not have to sand, therefore eliminating the need to clean up any dust.
13. The present invention, as embodied in the Fast Patch, provides a significant improvement for other reasons as well, including, for example:

- A. The Fast Patch allows the user to repair holes and cracks in walls by simply peeling the patch off of the backing paper, sticking it over the damaged area, and then painting it in a simple three-step process (Peel, Stick, Paint);
- B. The Fast Patch is provided in both a smooth and a textured finish, thus giving the end user a wall patch that will be an exact match for their walls, whether smooth or textured;
- C. Using the Fast Patch, the end user saves valuable time and effort, which are no longer consumed by patching the hole, applying a compound, sanding, texturing (if needed), and then painting;
- D. The Fast Patch is manufactured on a durable product that will maintain its size and shape over time; and
- E. The Fast Patch comes with a permanent adhesive on one side.

14. The claimed invention eliminates the need for backing, drywall, and a compound, as well as texturing (in situations where texturing is needed). In addition, the claimed invention provides uneven edges that provide improved blending over any known prior art. No prior art wall patches provide the novel combination of elements present in the claims of the present invention.

15. As a person experienced in the art, I do not believe that at the time of the invention it would have been within the level of ordinary skill in the art to make a wall patch with the combination of elements contained in the claims of the present application.

16. The present invention provides a non-obvious, new and innovative solution to the problems faced by the industry through its novel combination of features. The importance of this innovation is evident by the tremendous success it has enjoyed relative to other attempts.
17. WRS wall patches incorporating the features of the present invention have enjoyed tremendous commercial success since its introduction in 1999 because of the advantages they offer over conventional wall patches, such as the fiberglass or aluminum patch.
18. WRS has sold an average of 94,567 wall patches per month over the past several years. That is well over 1,000,000 patches per year, and well over 5,000,000 total patches since its introduction. If you factor in copycat wall patch sales sold by others, the total would be much higher, likely over ten million.
19. WRS wall patches received the "Best New Item" award from Do It Best hardware. This award is selected by the members, and is given to the company that introduces to best new item of the year. This award, attached as Exhibit E, is further evidence of the tremendous innovation represented by the present invention.
20. Since the introduction of the Fast Patch, wall patches having the advantages provided by the combination of features of the present invention have become increasingly more popular, while those without such combination of features have become increasingly less popular.

21. Many people that have wall repair needs now look exclusively for the peel, stick & paint style of wall patch of this invention, and will not purchase wall patches that do not offer the same features, benefits, and ease of use.
22. Also since the introduction of the Fast Patch, others have attempted to sell self-adhesive wall patches made of either fiberglass, aluminum, or a combination of both, but because of the problems identified previously, these have not gained the widespread popularity that Applicant's inventive patches have.
23. The importance of this innovation is further exemplified by later efforts of others to license this technology, to copy the invention, or to otherwise adopt its beneficial features to solve the above-described problems, despite not having previously had a similar product on the market.
24. Since WRS began selling its wall patches, several companies have approached WRS to negotiate license agreements that would allow them to market and sell our wall patch products under a private label. The first company to discuss such licensing opportunities was Homax Products, Inc. ("Homax") in 2000. Rather than take a license in 2000, Homax attempted to develop a competing product on its own. After it's initial attempts to develop a competing product were unsuccessful, Homax again approached WRS for licensing in 2002. Another company to engage in licensing negotiations was Eclectic in

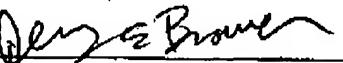
2002. Other companies that have engaged in licensing negotiations with WRS regarding this invention include Frost King in 2005 and Warner Tool in 2006.

25. Also after WRS began selling its wall patches, other companies have directly copied WRS's wall patch invention. Homax, in particular, first tried to produce a similar product but could not figure out how to. It was not until after Homax saw the present invention and conspired with the original inventor of the wall patch (Randy Swanson) that they began advertising and selling nearly exact copies of WRS's wall patches. Exhibit D shows Homax's direct copy of the present invention.

26. Without the teachings of the present application, I do not believe those of ordinary skill in the art would have been motivated to provide the combination of features that are provided by the Applicant's invention.

27. For these and other reasons and based on my knowledge and experience in the art, I believe the invention disclosed and claimed in the present application represents a new, novel, and non-obvious solution to the problems of the prior art.

Under the penalty of perjury, I declare the foregoing to be true and correct to the best of my knowledge and understanding.



Jerry E. Brower
President
Wall Repair Systems Inc.

11/16/2006

Dated

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DECLARATION OF GALE BRUNS

1. I, Gale Bruns, do hereby declare that I am the owner of Kingsford True Value 555 South Carpenter Ave., Kingsford, MI 49802. I have been involved with the home improvement and hardware business for several years. I have followed product developments and improvements in this industry very closely in order to offer our customers the best product available.
2. Though I own a hardware store I was unaware of a product that could repair some stress cracks that I had in my own house, I searched the Internet and came across a product manufactured by Wall Repair Systems Inc. (WRS). I ordered the product to try it for myself. After trying the product, I was so impressed that I contacted WRS directly and began stocking it in my store.
3. I have been involved with the hardware, and home repair industry for several years, and I have never seen an item quite like the WRS wall patches. The combination of elements that the product offers is quite unique to the wall repair industry. The product offers a permanent adhesive on one side, a paint ready or pre-textured paint ready surface on the other side, as well as uneven/irregular edges that help the product blend into the surrounding surface.

I declare under the penalty of perjury that the foregoing is true and correct.

Gale Bruns
Kingsford True ValueGale Bruns 11-16-06
Date